

SPIEGEL & MCDIARMID

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ROBERT C. MCDIARMID
ROBERT A. JABLON
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ALAN J. ROTH
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DANIEL I. DAVIDSON
THOMAS C. TRAUGER
JOHN J. CORBETT
CYNTHIA S. BOGORAD
GARY J. NEWELL
SCOTT H. STRAUSS
BEN FINKELSTEIN
LISA G. DOWDEN
RISE J. PETERS
PETER J. HOPKINS
DAVID E. POMPER

1350 NEW YORK AVENUE, NW
WASHINGTON, DC 20005-4798

TELEPHONE (202) 879-4000
FACSIMILE (202) 393-2866
EMAIL SPIEGEL@SPIEGELMCD.COM

DIRECT DIAL (202) 879-4002
EMAIL JAMES.HORWOOD@SPIEGELMCD.COM

MATTHEW W. WARD
JEFFREY A. SCHWARZ
DAVID B. LIEB
PABLO O. NÜESCH
TONY LIN
ANDREA G. LONIAN
OF COUNSEL
LEE C. WHITE
SANDRA J. STREBEL
MARGARET A. MCGOLDRICK
P. DANIEL BRUNER
PUBLIC AFFAIRS DIRECTOR
KENNETH A. BROWN
(NOT A MEMBER OF THE BAR)
MEMBER OF MA BAR ONLY

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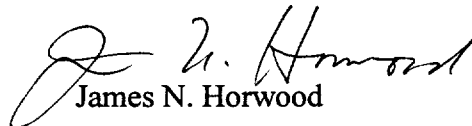
Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
TW-A325 12th Street Lobby
445 12th Street, S.W.
Washington, D.C. 20554

Re: Docket No. MM 93-25

Dear Ms. Salas:

Enclosed are an original and nine copies of "Response of Alliance for Community Media to Time Warner Cable Petition for Reconsideration" for filing, including five copies for the Commissioners.

Very truly yours,


James N. Horwood

JNH:pdn
Enclosures

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MAY 20 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Docket No. MM 93-25

Implementation of Section 25 of the Cable
Television Consumer Protection and
Competition Act of 1992

Direct Broadcast Satellite Public Service
Obligations

**RESPONSE OF ALLIANCE FOR COMMUNITY
MEDIA TO TIME WARNER CABLE PETITION
FOR RECONSIDERATION**

The Alliance for Community Media ("Alliance") submits this pleading to respond to the Petition for Reconsideration filed by Time Warner Cable and to suggest how Time Warner Cable's concerns can be accommodated in a more appropriate way.¹

Time Warner correctly points out that "[t]he most egregious example of the Commission's failure to carry out Congressional directives to impose appropriate public interest programming and localism obligations on DBS providers is the failure to adopt equivalent obligations in the area of local programming, particularly in light of Congress' express directive that the Commission seize this opportunity to require DBS providers to advance the statutory goal of localism." Petition for Reconsideration at 7. Time Warner goes on to observe that, while "the requirement that DBS providers set aside 4% of their channel capacity for non-commercial programming of an educational or informational nature might be argued to roughly approximate cable operators' PEG channel set-aside

¹ The Alliance participated with other organizations in the Opposition to and Response to Petitions for Reconsideration of DAETC and CME, *et al.*, filed on May 6, 1999. That pleading was submitted largely to oppose APTS/PBS's petition which asks the Commission to repeal its one channel per programmers limit.

requirements, currently there is no analogous obligation to match cable operators' obligations to provide funding to support the creation of local programming to air on PEG access channels." *Id.* at 7-8, n.omitted.

Time Warner, while "disput[ing] the legal validity" of the Commission's arguments that the DBS "localism" obligations may be premature, notes that pending legislative changes to the Satellite Home Viewer Act could provide DBS with the ability to become "local" or "regional." *Id.* at 9-10. The Alliance agrees with Time Warner that passage of the proposed amendments to the Satellite Home Viewer Act would eliminate the Commission's basis for distinguishing DBS from cable or OVS operators on the ground that DBS is essentially a "national" service.²

Time Warner also stresses its desire to have regulatory parity between cable (and OVS) and DBS providers. *See Id.* at 8-9 and 11-12. As Time Warner notes, there is no reason to give special treatment to DBS providers as a relatively new contract when OVS providers are not so treated. *Id.* at 4-6. The Alliance (1) advocated for what became the provision in the Telecommunications Act of 1996 requiring OVS providers to establish parity of PEG access requirements on cable systems and (2) actively participated in the Commission's Open Video Systems rulemaking proceeding (*Implementation of Section 302 of the Telecommunications act of 1996, Open Video Systems, Second Report and Order*, 11 FCC Rcd 18223 (1996)). The compelling policy reasons for such parity of PEG obligations on OVS apply as well to DBS service.

² *Report and Order* in MM Docket 93-25, FCC 98-307, ¶ 59, released Nov. 25, 1998.

In an attempt to accommodate the various concerns it identifies, Time Warner proposes as a solution that DBS providers contribute 5% of their gross receipts “directly to support the creation and development of programming aired on PBS,” which Time Warner describes as “essentially the national equivalent of non-commercial PEG programming.” Time Warner adds that “such a support obligation would be equivalent to cable operators’ local PEG access support obligations.” Petition for Reconsideration at 10. It is this suggestion that causes the Alliance to part company with Time Warner, because PBS is *not* the national equivalent of non-commercial PEG programming. Rather, PBS and PEG fulfill very different public interest missions. In addition to being mostly national in scope, PBS programming is editorially controlled by professionals, does not provide access to local community institutions or individuals, and is not a venue for non-profit or educational (distance learning) programming. PBS acts much more like another broadcast network than a community resource. On the other hand, PEG exists to: facilitate community programming (whether institutional or individual); promote non-profit and educational programming and missions; train individuals and groups in all aspects of media; be a venue for providing local information; and, much like a public library, be a comprehensive electronic resource which is available to be used by all people in the community.

The objective sought by Time Warner’s proposal can be better achieved by providing for the 5% to be contributed to local communities to be used in a manner to be determined by individual local governments or their designees to facilitate community programming, promote non-profit and educational programming admission, train

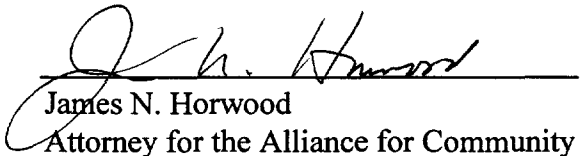
individuals and groups, and act as a comprehensive electronic resource.³ This approach would be consistent with the public interest programming and localism obligation on DBS providers that Time Warner identified and would provide for a smooth transition to the ultimate objective Time Warner seeks.

At such time as DBS is authorized to rebroadcast local broadcast signals, and thus can no longer be properly characterized as essentially a "national" service, the Commission could fulfill its commitment to impose requirements regarding financing the creation of local programming by requiring that 5% of a DBS operator's gross receipts be applied to fund production of local programming.

Id. at 10.

If the approach suggested by the Alliance is acceptable as a substitute for the interim approach of contributions to PBS, the Alliance could embrace and adopt Time Warner Cable's well-intentioned and otherwise well-supported recommendations with respect to requiring DBS providers to meet public interest obligations that are equivalent to cable operators' PEG obligations.

Respectfully submitted,


James N. Horwood
Attorney for the Alliance for Community Media

Law Offices of:
SPIEGEL & MCDIARMID
1350 New York Avenue, NW, Suite 1100
Washington, DC 20005-4798
(202) 879-4000

May 20, 1999

³ Local governments should be allowed to "bank" amounts received to be used to support local programming when DBS becomes available as a local service.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 20th day of May, 1999, caused the foregoing response to be sent by first class mail to the following individuals.

Marilyn Mohrman-Gillis
Lonna M. Thompson
Ass'n of America's Public Television Stations
1250 Connecticut Avenue, N.W., Suite 200
Washington, DC 20036

Eric E. Breisach
Christopher C. Cinnamon
Lisa M. Chandler
Bienstock & Clark
5360 Holiday Terrace
Kalamazoo, MI 49009

Philip L. Verveer
Angie Kronenberg
Willkie Farr & Gallagher
1155 21st Street, N.W.
Washington, DC 20036

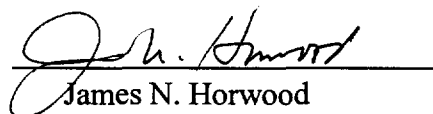
Aaron I. Fleischman
Arthur H. Harding
Regina Famiglietti Pace
Fleischman & Walsh, LLP
1400 16th Street, N.W., Suite 600
Washington, DC 20036

Cheryl A. Leanza
Andrew Jay Schwartzman
Media Access Project
1707 L Street, N.W., Suite 400
Washington, DC 20036

Henry Goldberg
Joseph A. Godles
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, DC 20036

Peter A. Rohrbach
Karis A. Hastings
Ronnie London
Hogan & Hartson
555 13th Street, N.W.
Washington, DC 20004

Jeneba Jalloh
Randi M. Albert
Institute for Public Representation
Citizens Communications Center Project
Georgetown University Law Center
600 New Jersey Avenue, Suite 312
Washington, DC 20001


James N. Horwood

Law Offices of:
Spiegel & McDiarmid
1350 New York Avenue, NW, Suite 1100
Washington, DC 20005-4798
(202) 879-4000